

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Government Appeal No. 116 of 2003

CRIMINAL SIDE:

State of Uttaranchal

Appellant

Versus

1. Sohan Singh S/o Vikramjeet Singh
2. Paramjeet Singh S/o Sohan Singh
3. Mohit Raza S/o Yusuf
4. Pradeep S/o Rajaram Chauhan
5. Ashwani Kumar Mittal S/o Shanta Prasad..... Respondents

Mr. A. Rab, learned Addl. Govt. Advocate for the State.

Mr. S.P. Singh, learned counsel for the respondents.

WITH

Criminal Revision No. 133 of 2003

Mahendra Pratap Singh Gill

Revisionist

Versus

State of Uttaranchal & Others

Respondents

Mr. Rajendra Singh, learned counsel for the Revisionist.

Hon. P.C. Verma, A.C.J.

Hon. Rajesh Tandon, J.

(Delivered by Hon'ble Tandon, J)

By the present appeal the State of Uttaranchal has challenged the judgment and order dated 31st July 2003 passed by Shri V.K. Jain, District and Sessions Judge, Haridwar in S.T. No. 17 of 2003 whereby acquitting Sohan Singh, Paramjeet Singh, Mohit Raza, Pradeep and Ashwani Kumar Mittal u/s 147, 148, 302, 149, 307/149 and 120-B/302 of the I.P.C. The present appeal has been preferred by the State of Uttaranchal against the

Aforesaid accused-respondents. A criminal revision No. 133 of 2003 has also been preferred by Mahendra Pratap Singh Gill in this case. Further, another session trial is pending before the Sessions Judge, Haridwar against Lakhbir, one of the co-accused in this murder case.

Case of the prosecution:

Brief facts giving rise to the present appeal are that on 8th October 2002 at about 8.30 A.M. one Bholu lodged a written report stating therein that today at about 7.45 A.M. when he went to dera (residence) of Ram Singh situated at Ranipur Jhal to assume his work he saw that Ram Singh, his wife and their servant were brutally murdered and were lying on their beds and other family members badly injured were also lying unconscious there. It was also reported that somebody killed them. The complainant was also accompanied by Mr. Rakesh @ Pappu son of Jagdish R/o Ghas Mandi. The scribe of this First Information Report was one Mr. Rakesh Kumar, Advocate and thumb impression of Bholu was also made on the F.I.R. On the basis of this written report the case was registered as case crime No. 419 of 2002 under Section 302/307 of I.P.C. by Police Station, Jwalapur. On the basis of the said F.I.R., the Station Officer Incharge, Police Station Jwalapur started investigation along with other police officials. The police team went to Ranipur Jhal at the residence of deceased Ram Singh and inspected the spot. On the instructions of the Inspector Incharge the injured persons were immediately rushed to the District hospital for medical treatment in the Police Petrol Car. The Inspector Incharge collected blood stained clothes of the deceased, blood stained mud, simple mud, one lathi, and one blood stained file cover from the place of incidence. He prepared a ferd and got the signatures of Bholu and Rejender on it. He also prepared map of the place of incidence.

Thereafter the Inspector Incharge went to Himalayan Institute, Jolly Grant on 9th October 2002 where he met one Sonal Prince who was assisting the injured persons and on his willingness his statement was recorded under Section 161 Cr.P.C. In his statement, Sonal Prince has stated that on 25th September 2002 he went to the C.J.M. Court at Haridwar in connection with the case of his brother and when he went to the canteen outside the C.J.M. Court for having tea he saw Sohan Singh along with his son Paramjeet Singh @ Pammi and Ashwani Kumar were having tea together. During their conversation Pradeep Chauhan also reached there who also joined the aforesaid group. Ashwani Kumar has reiterated to Pradeep Chauhan which was conveyed in between him and Soahn Singh and thereafter Pradeep Chauhan at the instance of Paramjeet Singh @ Pammi accorded his consent and all of them have joined together and pledged to eliminate the whole family of Ram Singh with the assistance of Pradeep Chauhan. On the aforesaid information of Sonal Prince, Sohan Singh, Paramjeet @ Pammi, Ashwani Kumar and Pradeep Chauhan were arrayed as accused and on 10th October 2002 accused Paramjeet Singh was arrested and during his interrogation the names of Nazim, Bablu and Mohit Raza were also disclosed and thereafter Nazim, Bablu and Mohit Raza were also arrayed as accused. On the same date Sohan Singh, Paramjeet, Pradeep Chauhan, Mohit Raza and Ashwani Kumar were also arrested from their houses. After the investigation by the Inspector Incharge was over on 11th November 2002 the matter was transferred to the C.B.C.I.D. Dehradun and at the instance of C.B.C.I.D., Nanke Singh Janwar, Inspector C.B.C.I.D. again investigated into the mater and submitted a charge sheet against Sohan Singh, Paramjeet, Mohit Raza, Pradeep Chauhan and Ashwani Mittal and at that time Lakhbir Singh, Bablu and Nazim were not challaned as they were absconding. The injured were medically examined in the

District Hospital, Haridwar and the medical report was prepared which was submitted before the Court. The Panchayat Nama of the three deceased persons was prepared by Sub Inspector Yogendra Singh Thana Jwalapur, Haridwar. All the necessary papers were prepared along with three dead bodies which were sealed and were sent for postmortem.

Dr. S.S. Lal, Medical Officer, Canal Dispensary, Mayapur, Haridwar performed autopsy on the dead bodies of the deceased on 08.10.2002. As per the postmortem report (Ex. Ka-8) deceased Ram Ram Singh sustained following ante-mortem injuries:

1. Contusion 10 x 7 cm. right side of head, 1 cm. away (behind) right ear pinna.
2. Abraded contusion 11 x 10 cm. on right side of face, just front of right tragus of ear.

As per the postmortem report (Es. Ka-9) deceased Bhajan Kaur sustained following ante-mortem injuries:

1. Incised wound 1 x 1 cm. on right ear lobule through and through.
2. Abraded contusion in an area of 14 x 7 cm. on right side of upper part of neck and face.
3. Incised wound 1 x 1/2 cm. on right side of mandible, transversely placed, 3 cm. away from right angle of mouth at 5' O clock position with fracture of mandible.
4. Contusion 7 x 5 cm. on left side of head, 1 cm. above left ear pinna upper part.
5. Abraded contusion 9 x 3 cm. on left side of upper part of front of chest 3 cm. above from left nipple at 12' o clock position.

As per the postmortem report (Ex. Ka-7) unknown male sustained following ante-mortem injuries:

1. Contusion 5 x 4 cm. on left side of head, 2 cm. above from left ear pinna.
2. Contusion 2 x 3 cm. left side of face, 1 cm. away from left tragus of ear.
3. Incised wound 7 x 4 cm. on right side of lower mandible, transversely placed, bone deep with fracture of mandible.
4. Abraded contusion 2 x 1 cm. on back side of right palm.

Dr. K.K. Karoli (P.W. 7), Senior Medical Officer, District Hospital, Haridwar medically examined the injured persons. As per the injury report, Gurdeep Kaur sustained following injuries:

1. Abraded wound left side of head 1.5 x 8.6 cm. bone deep, 2 cm. above left eyebrow.
X-Ray advised.
2. Abraded wound left 3 x .5 cm. above left eyebrow on the eyelid.
3. Contusion with swelling 5 x 4 cm. above left eye.

As per injury report (Ex. Ka-5), M.P.S. Gill sustained following injuries:

1. Multiple bruises 7 x 4 cm. left side behind the head.
2. Contusion with swelling and bruise right side on the jaw, lacerated wound 5 x 3 cm. muscle deep X-ray advised.
3. Contusion 5 x 3 cm. on the neck 2 cm. below right ear.

As per injury report (Ex. Ka-3) Shamsher Singh Gill sustained following injuries:

1. Abraded wound right side on forehead 4 x 1 cm. bone deep.
2. Abraded wound 6 x 5 x 1 left side of head, bone deep.
3. Contusion with swelling on left eye 6 x 4 cm.
4. Abraded wound 5 x 2 cm. behind left ear blood stained.

Charge-sheet was submitted on 22nd April 2003 whereby Sohan Singh, Paramjeet, Mohit Raza, Pradeep Chauhan, Ashwani Kumar Mittal were charge-sheeted to the following effect:

1. Sohan Singh, Paramjeet, Mohit Raza, Pradeep and Ashwani Kumar on 7th/8th October 2002 in the mid night of 12.30 A.M. to 1.30 A.M. along with Nazim, Lakhbir Singh and Bablu in order to kill Ram Singh, Smt. Bhazan Kaur and the servant and with a common intention have killed the aforesaid three persons by using force and violence.
2. The aforesaid person have also assembled armed with Lathi, danda, iron rods and sharp edged weapon with an intention to kill Ram Singh, his wife and his servant.
3. They have inflicted the injuries upon the deceased along with Lakhbir Singh, Bablu and Nazim and by using lathi, danda and iron rods they have inflicted the injuries and as such the accused persons were charge sheeted under Section 302/149, 147, 148, 307/149 and Section 120-B/302 of I.P.C.

Learned counsel for the accused-respondents has argued that this Court has limited jurisdiction as the appeal has been filed against the acquittal. The learned counsel for the accused respondents has also argued the following points:

1. The conspiracy alleged to have been hatched has not been proved against any of the accused persons and the motive and reason for committing the murder has not been proved by the prosecution against the accused persons..
2. From the prosecution evidence itself it is established that the accused Ashwani Kumar Mittal was not present in the canteen of the Civil Court Haridwar on 25.09.2002 and no accused was present in the conspiracy on 03.01.2002 at Shivalik Nagar Restaurant.
3. The F.I.R. of the case has been concocted and has not been written at the time it is purported to have been written.
4. The statements of the P.W. 4 Gurdeep Kaur, P.W. 5 M.P.S. Gill and P.W. 6 Shamsher Singh are not believable.
5. The medical report is not corroborative to the prosecution version.

An application for additional evidence of the prosecution witnesses has also been filed in criminal revision No. 133 of 2003 under Section 397/401 Cr.P.C.

Assessment of evidence and the findings based on the said evidence:

The learned Sessions Judge has discarded the ocular witnesses of Gurdeep Kaur (P.W. 4), M.P.S. Gill (P.W. 5), Shamsher Singh (P.W. 6) and Balbir without assigning any reason on the ground of discrepancy of medical evidence alone as will appear from this judgment to the following effect:

As far as Gurdeep Kaur (P.W. 4) is concerned the learned Sessions Judge has recorded a finding that she has stated on oath

that on 7th/8th October 2002 midnight at about 12.30 A.M. to 1.00 A.M. her father and mother were sleeping in the varandah and she and her two brothers were sleeping in the room. Two of their servants were sleeping in the next room. She has also deposed that the room were not locked from inside and the lights were on. She woke up after hearing groaning sound of his brothers and saw Sohan Singh, Paramjeet, Lakhbir Singh assaulting his brothers. Sohan Singh was armed with danda, Paramjeet was also having a danda with an iron ring attached to it and Lakhbir Singh was armed with iron rod. These three persons were accompanied with another 6-7 persons who were not known to her. She further deposed that as soon as she woke up the aforesaid three persons hit her on her head with danda and iron rod as a result she got injured and went unconscious and somewhat became conscious after three-four days and it took a week to regain her full consciousness. This witness was medically examined and a medical report was prepared. According to Dr. K.K. Karoli (P.W. 7) total three injuries were found on her person the details of which was given in the above mentioned paragraphs. According to Dr. Karoli all the above injuries were not possible with a single blow, it was possible only when atleast two blows were inflicted. The learned Sessions Judge in his findings also stated that when she was sleeping in the room how is it possible that she was found unconscious in the varandah from where she was sent for hospital. This means she was not fully unconscious at the time of assault. He also gave his finding that she must not have seen the incident as it was not possible that a person suddenly woke up from sound sleep and then immediately afterwards became unconscious after being hit on her forehead. He, therefore, on these grounds discarded the evidence of eyewitness P.W. 4 as doubtful.

As far as M.P.S. Gill (P.W. 5) is concerned the learned Sessions Judge has recorded his finding that P.W. 5 has deposed on oath that on 7th /8th October 2002 midnight at about 1.00 A.M. to 1.30 A.M. he was sleeping in the room along with his brother and sister. His mother and father were sleeping outside. The two servants were in the next room. He woke up at about 1.30 A.M. after hearing the noise of some persons walking close by. He saw 7-8 persons armed with lathi coming towards him. He recognized Sohan Singh, Paramjeet and Lakhbir amongst those persons. Paramjeet Singh hit him with danda on which iron ring was attached. After being hit he lost consciousness and regained his conscious only after three days in the hospital. According to Dr. K.K. Karoli (P.W. 7) three injuries were found on us person the details of which was given in the above mentioned paragraphs. According to Dr. Karoli all the above injuries were not possible with a single blow, it was possible only when atleast two-three blows were inflicted. According to Dr. Karoli, on examining the injuries of the P.W. 4 and P.W. 5 it is clear that the two injured should regain consciousness within 24 hours but the injured regain consciousness after some days. On the basis of these findings he also discarded the evidence of eyewitness. P.W. as doubtful.

As far as Shamsher Singh (P.W. 6) is concerned the learned Sessions judge has recorded his finding that he has deposed on oath that on 7th /8th October 2002 midnight at about 12.30 A.M. to 1.00 A.M. he was sleeping in the room with his elder brother and elder sister and her daughter. He woke up on hearing his brother crying and saw that 7-8 persons were assaulting his brother with iron rods. As he come forward to save his brother Lakhbir hit him on his head with iron rod. After getting hit by the iron rod on his head he lost consciousness after 10-15 seconds. According to Dr. K.K. Karoli (P.W. 7) four injuries were found on his person the details of which was given

in the above mentioned paragraphs. According to Dr. Karoli all the above injuries were not possible with a single blow, it was possible only when atleast two blows were inflicted. Therefore, the evidence of eyewitness P.W. 6 was also discarded as doubtful merely on medical evidence.

Further the learned Sessions Judge has twisted the statements of Shamsher Singh (P.W. 6) in the following manner:

Shamsher Singh had only stated about the incident that was already discussed in the above mentioned paragraphs of my judgment but he had stated nothing about the conspiracy. Prosecution had also examined Surender Pal Singh, Advocate (P.W. 3). He had also not stated anything about the incident or conspiracy. He had only stated that he was appointed as counsel in the Court cases that were being contested with deceased Ram Singh and handed over some documents relating to said Court cases to Investigating Officer, Mr. Vijay Kumar.....

....."Uski ferd bani. Kewal uus ferd ko aur uun kagjaat ko saabit kiya hain. Is prakar jo sakshi ghatna kae liye kahee gayee, unsae jis prakar ghatna abhiyukta Sohan singh, Paramjeet Singh vaa Lakhbir Singh dwara Kahana Kahaa gayaa hain, siddh naihn hotaa hain."

In connection with the aforesaid murder Bholu, the scribe of the F.I.R. was examined as P.W. 1 by the prosecution who has deposed that in the morning at about 7.45 A.M. when he reached the house of Ram Singh he saw that three persons namely, Ram Singh, his wife Bhajan Kaur and their servant were lying dead whereas Mahender, Shamsher, Balbir and sister of Mahender were lying injured. He has deposed that when he came on the road he met Rakesh and both of them went to Jawalpur where one Rakesh Kumar, Advocate also met them in Jwalapur who has written the complete report which was submitted and was described as First Information Report (Ex. Ka-1). The witness has also accompanied the police and came on the spot along with

Police officials and the dead bodies were lying there and the police has collected from the spot bed sheet, pillow, one blood stained file cover, blood stained mud, simple mud, one lathi were seized from the spot. The witness has also stated that the lathi is the same which was sealed on the spot and the boxes were also the same in which blood stained mud and simple mud were sealed at the time of incident. Even in the cross examination the witnesses has deposed that he himself has lodged the report and he has also deposed that he knows the Advocate who has prepared the F.I.R. on his instructions. It was also deposed by the deponent that the injured persons were lying unconscious.

The prosecution has also examined Sonal Prince (P.W. 2) who has deposed that on 8th October 2002 he had taken injured Shamsher Singh to P.G.I. Chandigarh and Shamsher Singh is his friend. The rest of the averments were absolutely denied. Prosecution then examined Surinder Pal Singh who was an Advocate of Ram Singh and he was a formal witness.

The prosecution has also examined Smt. Gurdeep Kaur wife of Dharam Veer Singh as P.W. 4. She has stated that on 7th /8th October 2002 midnight at about 12.30 A.M. to 1.00 A.M. her father and mother were sleeping in the verandah and she and her two brothers were sleeping in the room. She woke up after hearing groaning sound of his brothers and saw Sohan Singh, Paramjeet, Lakhbir Singh assaulting his brothers. Sohan Singh was armed with danda, Paramjeet was also having a danda with an iron ring attached to it and Lakhbir Singh was having iron rod. These three persons were accompanied with another 6-7 persons who were not known to her. She has stated that Sohan Singh is her real uncle and Lakhbir Singh & Paramjeet Singh are sons of Sohan Singh. As soon as she woke up the aforesaid persons hit her on her head with danda and iron rod as a result she got injured and went unconscious and after three-four days

when she regain her conscious she was informed that her father and mother had been killed along with one servant. She has further stated that there was a land dispute between his uncle and his father and his uncle wanted to grab the land of his father. According to her, his father taken some loan from Ashwani Kumar. Ashwani Kumar was pressurizing his father to pay the loan which he had taken from him and was also keen to take possession of the land of his father. In this regard a case was also going on in the Civil Court between them.

The prosecution has also examined M.P.S. Gill (P.W. 5) who has deposed that on 7th /8th October 2002 midnight at about 1.00 A.M. to 1.30 A.M. he was sleeping in the room along with his brother and sister. His mother and father were sleeping outside. He woke up at about 1.30 A.M. after hearing the noise of some persons walking close by. He saw 7-8 persons armed with lathi coming towards him. He recognized Sohan Singh, Paramjeet and Lakhbir amongst those persons. Paramjeet Singh hit him with danda on which iron ring was attached. After being hit he lost consciousness and regained his conscious only after three days in the hospital.

According to P.W. 5, a Court case was also going on between his family and Paramjeet Singh with regard to execution of a fake "will" whereby his uncle had fraudulently converted the total land in favour of his sons.

P.W. 5 has also deposed that his father deceased Ram Singh had taken a loan of Rs. 2,50,000/- from Ashwani Mittal for the purpose of his sister's marriage. Ashwani Mittal had fraudulently executed the sale deed of 75 bighas of land of his father in his favour and was blackmailing his father and joined hands with his uncle, Sohan Singh, who was an opposite party to him. Ashwani Kumar has also threatened his father of dire consequences. P.W. 5 had also deposed that with this motive in mind, the conspiracy was hatched by Ashwani Mittal in

connivance with these aforesaid persons eliminate his entire family.

The prosecution has also examined Shamsheer Singh (P.W. 6) who has deposed that on 7th /8th October 2002 midnight at about 12.30 A.M. to 1.00 A.M. he was sleeping in the room with his elder brother and elder sister and her daughter. He woke up on hearing his brother painful cries and saw that 7-8 persons were assaulting his brother with iron rods. As he came forward to save his brother Lakhbir hit him on his head with iron rod. After getting hit by the iron rod he lost consciousness after 10-15 seconds.

The prosecution has also examined Dr. K.K. Karoli (P.W. 7), senior Medical Officer, District Hospital Haridwar. The findings of P.W. 7 on the person of the injured persons have already been discussed in detail in the aforementioned paragraphs.

The prosecution has also examined Dr. S.S. Lal, Medical officer, Canal Dispensary, Mayapur, Haridwar. The findings of P.W. 8 on the dead bodies of the deceased have already been discussed in the aforementioned paragraphs.

In his statement Mr. Yogender Singh, S.S.I. (P.W. 9) has stated on oath that on 08.10.2002 he was posted in Thana Jwalapur as S.S.I. On getting the information that a triple murder had taken place in Gill Farm House at Ranipur Jhal and some persons are lying injured there, he along with his S.H.O. rushed to the place of incidence. They instructed the police officials and on their instructions the injured were taken to District Hospital. The dead bodies were sent for postmortem after Panchayat Nana were prepared separately for each deceased and letters were also dispatched to C.M.O. for conducting postmortem on the dead bodies. Dog squad was also called at the place of incidence. He has also stated that he

prepared the relevant documents at the place of incidence that were numbered as Ex. Ka-24.

The state of Mr. Vijay Kumar, S.H.O., Thana Jwalapur, Haridwar was also recorded on 15.07.2003. He has stated that he was deputed for conducting investigation of this case. According to him the complainant reached the police Station at about 8.30 A.M. in the morning and their after F.I.R. was lodged. After reaching the place of incidence, the map of the place was prepared by him and was numbered as Ex. Ka-25. On 10.10.2002 he arrested Sohan Singh, Paramjeet, Pradeep Chauhan, Mohit Raza and Ashwani Kumar on the basis of statements of Sonal Prince and M.P.S. Gill. He has also recorded the statement of other witnesses on 12.10.2002. On 19.10.2002 he recovered pocked diary of accused Paramjeet from his residence in which telephone numbers of other accused were found written. He has also recorded the statement of injured Balbir Singh on 21.10.2002. On 02.11.2002 the statements of M.P.S. gill, Sonal Prince and Gurdeep Kaur were recorded under Section 164 Cr.P.C. in the office of Chief Judicial Magistrate. On 08.11.2002 he handed over the investigation of the case of C.B.C.I.D. Dehradun.

The statement of P.W. 11, Nanke Singh Janwar, Inspector C.B.C.I.D. Dehradun was also recorded on 17.07.2003. He started the investigation of the case on 22.11.2002. He recorded the statements of the injured and other witnesses. The statements of the accused and statements of Dr. K.K. Karoli and Dr. S.S. Lal were also recorded by him. On 31.12.2002 he concluded the investigation of the case and filed a single charge sheet against all accused persons. The charge sheet was signed by him and was numbered as Ex. Ka-29

The statement of Mr. Rishi Pal Saini, Advocate (P.W. 12) was also recorded on 17.07.2003. The Panchayat Namas were prepared in his presence on 08.10.2002 and he signed on the Panchayat Namas of the three deceased persons. In his statement he further stated that on 25.09.2002 when he was having tea in the canteen of the Court with some acquaintances, Sohan Singh, Paramjeet @ Pammi and Ashwani Mittal were also having tea together. Ashwani Mittal was telling Sohan Singh that even after completing formalities of registered agreement, Sardar Ram Singh had not registered land measuring 170 bighas, half of which you have not got in spite of court proceedings which were pending. Ram Singh had entered into an agreement with me in respect of 75 bighas of land and the remaining land, which was yours, belongs to you only. In the meantime, Praveen Panwar came there and started talking to Pammi. Ashwani Kumar reiterated to Praveen Panwar the conversation that was going on between three of them before his visit. After hearing the same Praveen Panwar gave his consent on behalf of Pammi that you three along with my men would eliminate the family of Ram Singh. P.W. 12 has also stated that at time of conversation he was two-three steps farther from the above said persons. He further stated that on 03.10.2002 while he was purchasing sweets from a restaurant in Shivalik Nagar he saw Praveen Panwar and two-three other persons talking together that a deal was finalized with Ashwani Kumar, Sohan Singh and Paramjeet and now very soon we will eliminate the family of Ram Singh. They were also talking that this assignment would be carried out with the assistance of Sohan Singh, Paramjeet and Lakhbir.

One of the accused-respondent Ashwani Kumar Mittal Pleaded alibi on the ground that he was present in District Tehri at Chamba where he participated in a camp organized at the State level in which District Magistrate and Heads of all other

departments also participated. The main ground on which the alibi was pleaded was that on the day i.e. on 25.09.2002, on which the alleged conspiracy is being alleged against him, he was present in Tehri and in support of this various documents viz. official Daks and papers signed by him on that day, a Tender Document which was sanctioned by him on 25.09.2002 were produced. The most important plea of alibi in his favour was that he attended and participated a camp on 'Disaster Management' held by Administration Training Institute, Nainital from 24.09.2002 to 26.09.2002 and he attended the camp on all these three above mentioned days. Various Head of Departments were also present in this camp. Photographs and videos taken during this three days programme were also produced in support of the alibi in favour of Ashwani Kumar Mittal.

Individual role of the accused-respondents & other co-accused:

The individual roles of Sohan Singh, Paramjeet Singh, Lakhbir, Mohit Raza, Pradeep Chauhan and Ashwani Kumar so far as their hand in committing this crime is concerned is given hereunder:

Role of Sohan Singh:

The individual rule of accused-respondent, Sohan Singh is clearly made out from the statement of injured Gurdeep Kaur (P.W. 4). In her statement she had narrated to have seen assailants viz. Sohan Singh, Paramjeet and Lakhbir assaulting his brothers and these persons also inflicted injuries on her person also on 7th /8th October 2002. According to her she clearly recognized the three assailants, who were accompanied with other 6-7 assailants. Besides, the statements of other injured also corroborated the presence of accused-respondent along with other assailants at the time of incidence. The name of Sohan

Singh was also disclosed at the time when his sons and he himself was planning in the Civil Court Canteen to eliminate the deceased Ram Singh and his family members. This totally corroborated with the statement made by Sonal Prince (P.W. 2) on oath. Further, in his statement recorded under Section 313 Cr.P.C., the accused-respondent Sohan Singh has stated that he is the real brother of deceased Ram Singh. He has also admitted that a land dispute was going on between him and deceased Ram Singh.

Role of Paramjeet Singh:

The individual role of accused-respondent, Paramjeet Singh is clearly made out from the statement of injured M.P.S. Gill (P.W. 5). In his statement he had deposed to have seen assailants Sohan Singh, Paramjeet and Lakhbir on 7th /8th October 2002 accompanied with other 6-7 assailants. He further deposed that Paramjeet Singh hit danda on his head on which an iron ring was attached as a result of which he lost his consciousness. He has also stated that near about 20 days before the said incident, Paramjeet met him in the Court where he told him that *"a big explosion is going to take place, it would be better for you to leave all this litigation"*. Besides, the statements of other injured also corroborated the presence of Paramjeet along with other assailants at the time of incidence. The name of Paramjeet was also disclosed at the time when he along with other accused persons was hatching conspiracy in the Civil Court Canteen to eliminate the deceased Ram Singh and his family members. This totally corroborated with the statement made by Soanl Prince (P.W. 2) on oath.

Role of Lakhbir Singh:

The individual role of co-accused, Lakhbir is clearly made out from the statement of injured Shamsheer Singh Gill (P.W. 6). In his statement he had deposed to have seen assailants Sohan

Singh, Paramjeet and Lakhbir assaulting his brother M.P.S. Gill on 7th /8th October 2002 along with 6-7 other assailants. He further deposed that when he came forward to save his brother, Lakhbir hit iron rod on his head as a result of which he lost his consciousness. Besides, the statements of other injured also corroborated the presence of Paramjeet along with other assailants at the time of incidence. The name of Lakhbir was also disclosed at the time when he along with other accused persons was hatching conspiracy in the Civil Court Canteen to eliminate the deceased Ram Singh and his family members. This totally corroborated with the statement made by Sonal Prince (P.W. 2) on oath. However, since session trial is already pending before the Sessions Judge, it will be open for the Sessions Judge for recording an independent finding on the basis of assessment of evidence on Record.

Role of other accused-respondents:

As far as the individual role of accused-respondents, Ashwani Kumar and Pradeep Chauhan are concerned their name were disclosed by P.W. 2, Sonal Prince in his statement recorded under Section 161 Cr.P.C. According to P.W. 2, while he was in the Civil Court premises Haridwar in connection with a case of his brother and was in the canteen outside the Court premises one Sohan Singh his son Paramjeet Singh and Ashwani Kumar were taking tea together there. In the meantime, Pradeep Chauhan also joined them and Ashwani Kumar repeated his conversation already made to Sohan Singh. Pradeep Chauhan then gave his consent on behalf of Paramjeet Singh and Pradeep Chauhan also said that all right I myself with Ashwani Kumar Sohan Singh and Paramjeet Singh will finish the whole family of Ram Singh. On the basis of this statement of P.W. 2 all these accused-respondents were named during the investigation and were arrested on 10.10.2002.

In the latest case of *Zahira Habibulla H. Sheikh and another Vs State of Gujarat and others* reported in (2004) 4 SCC 158, The Apex Court has held as under:

"When the ghastly killings take place in the land of Mahatama Gandhi it raises a very pertinent question as to whether some people have become so bankrupt in their ideology that they have deviated from everything which was so dear to him. When large number of people including innocent and helpless children and women are killed in diabolic manner it brings disgrace to the entire society. Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but a mere cloak to usurp power by fanning ill feeling and playing on feelings aroused thereby. The golden thread passing through every religion to love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy.

The little drops of humanness which jointly make humanity a cherished desire of mankind had seemingly dried up when the perpetrators of the crime had burnt alive helpless women and innocent children. Was it their fault that were born in the houses of persons belonging to a particular community. The still, said music of humanity had become silent when it was forsaken by those who were responsible for the killing.

"Little drops of
water, little grains of sand
make the mighty ocean
and the pleasant land
Little deeds of kindness,
Little words of love
Help to make earth happy
Like the heaven above."

From all probability it is evident that it was a brutal murder of three persons and all the ingredients under Section 300 are attracted in this case.

In the case of State of U.P. Vs. Virendra Prasad reported in 2004 AIR SCW 626, the Apex Court while deciding the above appeal has explained in detail the distinction between "murder" and "culpable homicide not amounting to murder" to the following effect:

"This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC "culpable homicide" is the genus and "murder", its species. All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree. This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation

and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Section 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

Section 299

A person commits culpable homicide if the act by which the death is caused is done-

INTENTION

(a) With the intention of causing death; or

KNOWLEDGE

(c) With the knowledge that the act is likely to cause death.

Section 300

Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-

(1) With the intention of causing death; or

(2) With the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him

is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of the person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The words "likely" in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury sufficient in the ordinary course of nature to cause death" means that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature, Rajwant Singh Vs. State of Kerala (AIR 1966 SC 1874) is an apt illustration of this point.

In Virsa Singh Vs. State Punjab (AIR 1958 SC 465), Vivian Bose, J. Speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution

must prove the following facts before it can bring a case under Section 300 "thirdly". First it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

The ingredients of clause "thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows"

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly',.

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons-being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages.

The aforesaid judgment of the Apex Court fully applies to the present case as the offender had the knowledge as to the probability of death as the injuries being caused from his imminently dangerous act.

In the case of Ram Bali Vs State of U.P. reported in 2004

(1) Uttaranchal Decisions, 578, the Apex Court has discussed with regard to medical evidence as under:

"Even otherwise, the plea that the medical evidence is contrary to the ocular evidence has also no substance. It is merely based on the purported opinion expressed by an author. Hypothetical answers given to hypothetical questions, and mere hypothetical and abstract options by

textbook writers, on assumed facts, cannot dilute evidentiary value of ocular evidence if it is credible and cogent. The time taken normally for digesting of food would also depend upon the quality and quantity of food as well, besides others. It was required to be factually proved as to the quantum of food that was taken, atmospheric conditions and such other relevant factors to throw doubt about the correctness of time occurrence as stated by the witnesses. Only when the ocular evidence is wholly inconsistent with the medical evidence the Court has consider the effect thereof. This Court is *Pattipati venkaiah Vs State of Andhra Pradesh* (AIR 1985 SC 1715) observed that medical science is not yet so perfect as to determine the exact time of death nor can the same be determine in a computerized or mathematical fashion so as to be accurate to the last second. The State of the contents of the stomach found at the time of medical examination is not a safe guide for determining the time of occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when exactly the deceased had his last meal and what meal consisted of. In *Nihal Singh and others Vs The State of Punjab* (AIR 1965 SC 26), it was indicated that the time required for digestion may depend upon the nature of the food. The time also varies according to the digestive capacity. The process of digestion is not uniform and varies from individual to individual and the health of a person at a particular time and so many other varying factors.

In view of the aforesaid facts the reasoning given by the learned Sessions Judge cannot be sustained and is liable to be set aside.

In *Main Pal Vs State of Haryana* reported in 2004 (49) ACC 177, the Apex Court has rightly confirmed the judgment of the High Court and set aside the judgment of the Appellate Court who has acquitted the accused and therefore the arguments of the counsel for the respondents has no substance:

*"There is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal the High Court as the Court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh and others Vs State of Madhya Pradesh*; 2002 (44) ACC 112 (SC). The principal to be followed by Appellate Court considering the appeal against the judgment of acquittal is*

to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. This position has been recently reiterated in Joseph Vs State of Kerala 2003 (46) ACC 1145 (SC); Devatha Venkataswamy @ Rangaiah Vs Public Prosecutor, High Court of A.P. 2003 (10) SCC 700; State of Punjab Vs Phola Singh and another 2003 (47) ACC 1091 (SC); State of Punjab Vs Karnail Singh 2003 (47) ACC 654 (SC); State of U.P. Vs Babu and others 2003 (47) ACC 994 (SC) and Suchand Pal Vs Phani Pal and another 2004 (48) ACC 48 (SC)."

We are of the conscious opinion that the nature of the crime, the consequences of the crime and the impact of the crime on the community should be taken into consideration broadly. The Apex Court in Gyasuddin Khan alias Md. Gyasuddin Khan Vs State of Bihar reported in 2004 (48) ACC 902, has laid down as under:

"In the light of the overwhelming and unimpeachable evidence, it has been established beyond shadow of doubt that the appellant killed the three policemen, namely, Ram Pandey (Hawaldar), Chandrashekar Singh (SI) and Bhagirath Singh (Halwaldar) with the sten-gun picked up from the 'chowki' of Ram Pandey. The conviction of the appellant under section 302 IPC Is therefore upheld.

"Guilt once established, the punitive dilemma begins" (per Krishna Iyer J. In 1974(4) SCC 443) and this dilemma reaches its peak when the magnitude of the crime is enormous, viewed from the angle of number of casualties inflicted by the offender. In Bachan Singh's case, 1980(2)

SCC 684, death sentence has passed the test of constitutional validity. It has come to stay as part of our law of penology. At the same time, it hardly needs to be emphasized that the capital punishment ought to be imposed only in very rare and exceptionally grave cases of murder. 'Scrupulous care and humane concern' should inform the approach of Court. The view held by this Court in *Sheikh Ishaque v. State of Bihar*, 1995 (3) SCC 392, apart from other cases is that the number of persons killed, though a factor to be taken into account, should not be the sole consideration to condemn the criminal to death. A delicate balancing of various factors such as those which give an insight into the state of mind, motivation, attitude and propensities of the accused has to be done while at the same time keeping in view the larger societal interests. The principle that in case of murder, life imprisonment is the normal rule and the death sentence should be handed down in rarest of rare cases should of course be uppermost in the mind of the Judge. Though no hard and fast rules can be laid down, *prima facie*, a dangerous criminal who has indulged in the killing spree in an extremely brutal and horrendous manner to achieve his own selfish gains or to satisfy his physical lust or to disrupt the public order and peace should be considered to be a menace to society and he be subjected to the extreme punishment of death. However, even in such cases, mitigating circumstances are not out of place. Whole death sentence ought to be imposed in the rarest of rare cases, so long as the law provides for it and such law has withstood the judicial scrutiny, the Court cannot make it a dead letter and refuse to impose death sentence where nothing short of it would be appropriate and adequate. The justification behind death sentence is to respect the collective conscience of the society in relation to

crimes of extreme brutality and terrorism and to impart security to the society. The element of deterrence is of course inherent in it. As pointed out in Allauddin Mian's case, 1989 (26) ACC 400 (SC), death sentence serves a three fold purpose(i) punitive (ii) deterrent and (iii) protective.

Similarly, the Apex Court with regard to the close scrutiny of the evidence of the witnesses in the case of Sucha Singh and another Vs. State of Punjab reported in 2003 CRI. L.J. 3876, have discussed the same to the following effect:

"We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

In Dalip Singh and others Vs. the State of Punjab (AIR 1953 SC 364) it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

The above decision has since been followed in *Guli Chand and others Vs. State of Rajasthan* (1974 (3) SCC 298) in which *Vadivelu Thevar Vs. State of Madras* (AIR 1957 SC 614) was also relied upon.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Base, J. it was observed:

"We are unable to agree with the learned judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in- 'Rameshwar Vs. State of Rajasthan' (AIR 1952 SC 54 at p. 59). We find, however, it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

Again in Masalti and others Vs. State of U.P. (AIR 1965 SC 202) this Court observed (Pp. 209-210, para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

In the case of Krishnan and another Vs. State (2003 CRI. L.J. 3705), the Apex Court has held as under:

Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

It is trite that where the eye-witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice, Hence, the importance and primacy of the quality of the trial process. Eye-witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The

evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts the 'credit' of the witnesses; their performance in the witness-box' their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense, and ultimately, on the trained institutions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uniformed legitimization of trivialities would make a mockery of administration of criminal justice. This position was illuminatingly stated by Venkatachalia, J. (as His Lordship then was) in State of U.P. Vs. Krishna Gopal and another (AIR 1988 SC 2154)."

Offence under Section 120-B I.P.C:

So far as the charge under Section 120-B I.P.C. is concerned we are in agreement with the findings of the Sessions Judge, Haridwar that no charge is made out u/s 120-B I.P.C. Section 120-A defines criminal conspiracy as under:

S. 120-A When two or more persons agree to do, or cause to be done,-

- (1) *An illegal act, or*
- (2) *an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

As will appear from the facts on record that there is no material evidence available on record that accused-respondents namely, Sohan Singh, Paramjeet Singh, Ashwani Kumar Mittal and Pradeep Chauhan agreed for an illegal act or by illegal means so as to constitute any criminal conspiracy.

Sub Clause 1 of Section 120-B provides as under:-

"whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence".

As will appear from sub Clause 2 read with Section 120-A, we find no evidence available on record so as to punish the accused-respondents namely, Sohan Singh, Paramjeet Singh, Ashwani Kumar Mittal and Pradeep Chauhan being a party to a criminal conspiracy. We, therefore, find no foundation so as to convict the accused-respondents named above for the offence of criminal conspiracy.

The Apex Court in the case of Damodar Vs. State of Rajasthan reported in [2003(11) AIC 394 (S.C.)] has held as under:

"It was noticed that section 120-A and 120-B, IPC have brought the law of conspiracy in India in line with English

law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the Court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice or necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under section 120-B of the Indian Penal Code.

After referring to some judgments of the United States Supreme Court and of this Court in *Yash Pal Mittal Vs State of Punjab*; 1977 (4) SCC 540, and *Ajay Aggarwal Vs. Union of India*; 1993 (3) SCC 609, the Court in *State of Maharashtra Vs. Som Nath Thapa*; 1996 (4) SCC 659, summarized the position of law and the requirements to establish the charge of conspiracy, as under: (SCC p. 668, para 24).

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from knowledge itself. This apart, the prosecution has not to establish

that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use." (See State of Kerala Vs. P. Sugathan and another)

The evidence on record is too scanty and meager to bring in application of section 120-B, IPC. No material has been brought on record so far as the appellant-Damodar is concerned, except that he belonged to the family of Balak Dass. It is also improbable that PW-15 could have heard about the exhortation by accused-Balak Dass to run over the vehicle considering the distance from which the statement is said to have been made and the speed of the vehicle. Merely because accuse-Damodar is the son of Balak Dass who it is brought on record had a dispute with the deceased over properties is not sufficient to establish the charge of conspiracy. That being so, the conviction of all the three appellants under section 302 read with section 120-B, IPC cannot be maintained.

As rightly held by the Apex Court in Girja Shankar Misra Vs. State of U.P. [(1993) AIR (2) SC page 2628], that it is not possible to convict Girja Shankar Misra alone for the offence of conspiracy particularly when the evidence regarding the said conspiracy as against Girija Shankar Misra is wholly insufficient.

It is well established that direct proof of conspiracy is scarce and the chain of circumstances in the present case are not sufficient in order to prove the criminal conspiracy.

The prosecution witness No. 2, Soanl Prince happens to have seen the above named accused-respondents hatching conspiracy in Civil Court compound canteen on 25.09.2002. But later on at the time of this statement on oath in the Court below, the P.W. 2 himself deposed that he never visited the Court and never had tea in the canteen there. He further deposed that none of his friends is an advocate and he did not hear any conversation of anyone in the Court or in Vicinity of the Court. Besides this, one of the accused-respondent Ashwani Kumar Mittal while pleading alibi successfully proved that he was not present in the Civil Court compound canteen on the day i.e. 25.09.2002 when the alleged conspiracy is being said to have been hatched by the alleged conspirators.

Thus, it can safely be said that no evidence has been led so as to constitute any offence under Section 120-B I.P.C. against the above named accused-respondent. Therefore, the findings of the Sessions Judge, Haridwar so far as the acquittal of the accused-respondents under Section 120-B is concerned cannot be interfered with.

Conclusion:

The injured eyewitnesses have stated to have seen the aforesaid assailants, Shohan Singh and Paramjeet Singh on that fateful day along with others. It has come in the statement of each eyewitness that these assailants inflicted bodily injuries on them with the sole intention of causing death and three deceased died. The statement of these injured eye witnesses have to be given full credit and on the basis of statements of these injured eye witnesses, the District and Sessions Judge ought to have convicted these two accused namely, Sohan Singh and Paramjeet Singh. Accordingly, we convict these two accused-respondents for commission of offences under Section 147, 148, 149, 302 and 307 of I.P.C. It has to borne in mind, that brutal killings.

of there innocent persons is involved in this case. Besides, it can be safely concluded that the lethal blows inflicted on the injured are so imminently dangerous that it in all probability could cause death to the injured persons also. The assailants had a motive also to kill the entire family as the land dispute was there between the two parties and accused-respondents wanted to grab the land of deceased Ram Singh. The acts and circumstances taken cumulatively are sufficient to prove the commission of offence under Sections 147, 148, 149, 302 and 307 of I.P.C. by Sohan Singh and Paramjeet Singh.

ORDER

In the result, we allow the appeal in part and the order dated 31st July 2003 passed by the learned District and Sessions Judge, Haridwar is set aside so far as it relates to accused-respondents, namely, Sohan Singh and Paramjeet Singh. These accused are sentenced for life imprisonment under Sections 147, 148, 149, 302 and 307 of I.P.C. Let the lower Court record be sent back along with the copy of this judgment for compliance. The learned Court shall ensure the arrest of the convicts, namely, Sohan Singh and Paramjeet Singh so that the sentence may be served out by them.

All the accused-respondents have been acquitted u/s 120-B of I.P.C. in our judgment. Therefore, Mohit Raza, Pradeep Chauhan And Ashwani Kumar Mittal cannot be held to be guilty of commission of offence under Sections 147, 148, 149, 302 and 307 of I.P.C. They are acquitted from the charges leveled against them.

A connected criminal revision bearing No. 133 of 2003 under Section 397/401 Cr.P.C. has also been filed on behalf of M.P.S. Gill, one of the injured and an interested person in this case. In the connected revision an application has been filed for additional evidences u/s 391 of the Cr.P.C. In view of the fact

that we have already convicted Sohan Singh and Paramjeet Singh, there is nothing to discuss with regard to the additional evidence as the material evidence already on the record are sufficient to justify the case of the prosecution on the basis of the injured eye witnesses namely Gurdeep Kaur, Shamsheer Singh Gill and the servant Balbir.

(Rajesh Tandon, J.) (P.C. Verma, A.C.J.)

Dated: 16th June, 2004.

H Negi